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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,104	03/30/2001	Thomas B. Harsch	TELNP137USA	1162
7590 10/04/2005			EXAMINER	
Himanshu S. Amin Amin & Turocy, LLP National City Center, 24th Floor 1900 East Ninth Street Cleveland, OH 44114			CHO, HONG SOL	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/822,104

Applicant(s)

HARSCH, THOMAS B.

Examiner

Hong Cho

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30,32-41 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30,32, 35-41 and 43-49 is/are rejected.
- 7) ☒ Claim(s) 33 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. The following is in response to the amendments filed on 8/31/2005.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 30 and 48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6212175 (hereinafter referred to as Harsch). Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant

application merely narrows the scope of claim 1 of Harsch by adding the limitations, “transparent. Generally, the keepalive packet sequence number is one less than the number that the receiving device expects to receive. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Harsch so that the keepalive packet would be transmitted transparently from the mobile communication unit to the network device without the necessary step of packet acknowledgement.

Claims 47 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of Harsch. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application merely narrows the scope of claim 1 of Harsch by adding the limitations, “transparent. Generally, the keepalive packet sequence number is one less than the number that the receiving device expects to receive. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Harsch so that the keepalive packet would be transmitted transparently from the mobile communication unit to the network device without the necessary step of packet acknowledgement.

Re claim 32, Harsch discloses all of the limitations of the base claim, but fails to disclose determining the predetermined period of time by a keepidle timer. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the predetermined period of time by a timer since Harsch suggests to reset the predetermined period of time.

Re claim 35, it is the claim corresponding to claim 16 of Harsch and is therefore rejected with the reason of the provisional rejection based on a nonstatutory double patenting ground.

Re claim 36, it is the claim corresponding to claim 14 of Harsch and is therefore rejected with the reason of the provisional rejection based on a nonstatutory double patenting ground.

Re claim 37, it is the claim corresponding to claim 19 of Harsch and is therefore rejected with the reason of the provisional rejection based on a nonstatutory double patenting ground.

Re claim 38, Harsch discloses that the network device is a host computer. .

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 39-41 and 43-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter since they disclose a structure of a packet data.

***Response to Arguments***

5. Applicant's arguments with respect to claims 30, 32-41, and 43-49 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087.

The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3088.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hc

Hong Cho  
Patent Examiner  
9/30/2005



HANH NGUYEN  
PATENT EXAMINER